



Writ Petition No.35217 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>30.01.2024</i>
<i>Pronounced on</i>	<i>25.04.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.35217 of 2019
WMP.No.36008 of 2019

K.Kumar

..Petitioner

VS.

The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and to quash the impugned order of suspension dated 10.10.2019 vide no.MEE/E4/1664(B)/2017/MM extending the previous order of suspension dated 17.07.2019 vide no.V4/264/2017/Vig and consequently direct the respondent to reinstate the petitioner in the post of Senior Deputy Materials Manager, Chennai Port Trust within the time frame, as fixed by this Court.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mr.Shri Aiyalu Ravi for R1



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ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, Certiorarified Mandamus, to call for the records of the respondent and to quash the impugned order of suspension dated 10.10.2019 vide no.MEE/E4/1664(B)/2017/MM extending the previous order of suspension dated 17.07.2019 vide no.V4/264/2017/Vig and consequently direct the respondent to reinstate the petitioner in the post of Senior Deputy Materials Manager, Chennai Port Trust within the time frame, as fixed by this Court.

2.The brief facts, as per the affidavit of the petitioner are as follows:

The petitioner was working as Senior Deputy Materials Manager in Chennai Port Trust and on account of certain serious irregularities as regards the sale of Iron Ore through e-auction to the successful bidder by fixing abnormal reserve price and causing loss to the Chennai Port Trust, etc., he along with other two officials, was placed under suspension vide order dated 17.07.2019 and disciplinary proceedings were initiated by issuing a charge memo dated 25.07.2019.



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3. Aggrieved by the suspension order, dated 17.07.2019, the petitioner approached this Court by way of Writ Petition in W.P.No.21569 of 2019, seeking to quash the impugned suspension order and also to reinstate him in service. However, the said Writ Petition came to be withdrawn since the petitioner made an endorsement that he would make a representation, seeking to revoke the suspension order. This Court, vide order dated 13.09.2019, while disposing the said Writ Petition, granted liberty to the petitioner to make representation to the concerned authority, who in turn shall dispose of the same in accordance with law and on merits.

4. Pursuant to the above direction, the petitioner made a representation on 03.10.2019 and the Suspension Review Committee of the Chennai Port Trust, has reviewed the case and recommended to continue his suspension for a further period of six months i.e. from 15.10.2019 to 11.04.2020. Accordingly, vide proceedings dated 10.10.2019 impugned in the present Writ Petition, the suspension was extended for further period of six months. Aggrieved by the same, the petitioner has constrained to file the present Writ Petition.



WEB COPY 5. A detailed counter affidavit has been filed on behalf of the respondent stating that the investigation has revealed serious irregularities in the sale of top layer of Iron Ore Fines through e-auction to the successful bidder i.e., M/s.SYR Infrastructure, Chennai. Hence, disciplinary proceedings has been initiated against the petitioner and other two officials, for the lapses in sale of Iron Ore at Chennai Port Trust. The decision to pursue disciplinary proceedings against the petitioner has been taken by the competent authority independently, for the serious lapses on the part of the petitioner in the process of fixing reserve price, causing financial loss to the respondent and for receipt of sale consideration from H3 bidder instead of H1 bidder, since he had committed misconduct under Regulations 3(1)(i), 4(1), 4(5) and 4(9) of the Chennai Port Trust Employees(Conduct) Regulations, 1987. Further, the suspension of the petitioner was reviewed by the Review Committee. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time. Accordingly, the Review Committee has extended the suspension of the petitioner for a period of six months i.e., upto 11.04.2020, and extended further period of 3 months i.e.,



upto 10.07.2020 and continued for a further period of six months i.e., upto 06.01.2021. It is further stated that the petitioner has been kept under suspension in the larger interest of the respondent Port Trust and it is justifiable. With these averments, the respondent sought for dismissal of the Writ Petition.

6.Heard, Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner and Mr.Shri Aiyalu Ravi, learned counsel for the first respondent and perused the entire materials placed on record.

7.Mr.K.Ravi Anantha Padmanaban, learned counsel for the petitioner would contend that prior to suspension, the petitioner was transferred on 05.04.2019 to a non-sensitive post and thereby, the prolonged suspension is bad in law. He would submit that already charge sheet has been filed against the petitioner and the suspension of the petitioner need not be continued as the question of tampering of the witnesses does not arise and the same is liable to be revoked. He would further submit that at any cost, the suspension should be for short duration and he relied upon a decision of the Hon'ble Supreme Court in “*Ajay Kumar Choudhary versus Union of*



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India and another” reported in (2015) 7 SCC 291, wherein, it is has been held that the currency of suspension order should not be extended beyond three months if within this period, the charge memo/sheet is not served to the charged officer and if charge memo/sheet is served, a reasoned order must be passed for extension of the suspension. Therefore, he pointed out that the respondent has not assigned proper reasons for extension of the suspension order. The learned counsel further submitted that in view of his prolonged suspension, the petitioner is unable to pay monthly maintenance to his wife and child since the subsistence allowance is very meagre and his name was also not included in the panel for next promotion. With these contentions, the learned counsel for the petitioner prays to allow the Writ Petition.

8. It is an admitted fact that a criminal prosecution is pending against the petitioner in C.C.No.5 of 2019 on the file of the learned XIV Additional Special Judge for CBI cases, Madras. The CBI also filed the charge sheet in the month of February 2019. Subsequent to the filing of the charge sheet, the petitioner was kept under suspension by order dated 17.07.2019. In fact, prior to suspension, the petitioner was transferred to a non-sensitive



post by order dated 05.04.2019. Earlier to this transfer, the petitioner was working in Purchase Section of Chennai Port Trust. At the instance of CBI, the respondents transferred the petitioner and two other officers of the respondents to non-sensitive posts. Subsequently, the Suspension Review Committee of the Chennai Port Trust has reviewed the case and recommended to continue his suspension from 15.10.2019 to 11.04.2020. Accordingly, the impugned order dated 10.10.2019 was issued extending the suspension of the petitioner for a further period of six months. In the additional affidavit filed by the petitioner, it is stated that the said suspension got extended from time to time till 19.06.2024. Thus, it appears that for nearly 5 years, the petitioner has been under suspension.

9. In fact, the petitioner filed a Writ Petition in WP.No.35273 of 2019, seeking a relief to forebear the respondents from proceeding any further in the disciplinary proceedings vide no.V4/264/2017/VIG dated 25.07.2019 against the petitioner until conclusion of the criminal prosecution vide in CC No.5 of 2019 on the file of the XIV Additional Special Judge for CBI Cases, Madras. The said Writ Petition was disposed of by this Court vide order dated 02.12.2022, observing that the relief as



such sought for in that Writ Petition cannot be granted. In the said order, this Court directed the respondents to conclude disciplinary proceedings as expeditiously as possible, since long pendency would cause prejudice to the interest of the employee also.

10. During the course of hearing, the learned counsel for the petitioner reported that till now disciplinary proceedings are not concluded and even the enquiry officer also was not appointed by the respondents till date. The learned counsel contends that the law on suspension is well settled after the judgment of the Hon'ble Apex Court in "***Ajay Kumar Choudhary versus Union of India and another***" reported in 2015 (2) SCALE 432. He further submits that following the said judgment, number of decisions have been rendered by this Court over a period of 10 years in respect of prolonged suspension. The relevant paragraphs of the judgment of the Apex Court in "***Ajay Kumar Choudhary's case cited supra***", are extracted hereunder:

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary



proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

“12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.



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“13. to 20.

“21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”



WEB COPY 11. The learned Single Judge of this Court while dealing with the similar issue of prolonged suspension in WP.No.23228 of 2020, has observed in paragraphs 15 and 16 in his order dated 06.03.2020 as under:

“15. The prolonged suspension even in matters of corruption like the present one, by itself, constitute a grave prejudice to the right of the citizens to have speedy trial and justice. Such prolonged suspension would by itself casts stigma on the delinquent concerned and the stigma would prolong as long as the suspension order operates without any finality to the allegation being enquired into against the delinquent concerned. **Such delay in judicial proceedings casts a shadow on the Government servants' character and integrity on one hand and on the other, the subsistence allowance which is required under law to be paid to the suspended employee would be a loss to the public exchequer, as the suspended Government servants draw their subsistence allowance without any corresponding duty to work and earn their livelihood.**

“16. Therefore, this Court is of the view that both in the interest of delinquent concerned as well as the public administration, the prolonged suspension like the present case for more than seven years needs to be avoided unless, the administration feels that exceptionally a hard and incorrigible case wherein, reinstatement pending criminal/disciplinary proceeding would put the public interest completely at peril



and would shake the confidence and faith of the society in public administration. **The prolonged suspension in the normal course is to be discouraged as authorities ought to review the cases of suspension periodically and particularly in long pending criminal cases, the authorities cannot simply take refuge on the reason of the pendency of criminal trial against the delinquent. Such approach of the authority concerned betrays application of mind in evaluating each one of the case of suspension on its merits.”**

12. The above judgments were rendered against the prolonged suspension of the employees and while revoking suspension orders, it is directed to reinstate them in any of the non-sensitive posts. The respondent decided to post the petitioner in a non-sensitive post till completion of the trial based on the direction from the CBI, ACB, Chennai vide proceedings No.MEE/E4/1169/2019/MM and therefore, the Chief Mechanical Engineer has requested to reallocate the duties of officers. Accordingly, the Chief Mechanical Engineer issued proceedings No.MEE/E4/1169/2019/MM, dated 05.04.2019. The petitioner is reallocated and posted as in-charge of Depots. As such the petitioner could able to establish that he was posted in a non-sensitive post prior to his suspension dated 07.07.2019. Subsequently, he was kept under suspension with effect from 17.07.2019. It is an undisputed



fact that as on date, the criminal proceedings and the disciplinary proceedings initiated against the petitioner are not concluded and thus, the proceedings are still pending. This Court cannot brush aside the contention of the learned counsel for the petitioner that till date, no enquiry officer has been appointed. The respondents failed to conclude the disciplinary proceedings till date though this Court by order dated 02.12.2022 in WP.No.35273 of 2019, directed them to conclude the disciplinary proceedings expeditiously while observing that since the long pendency would cause prejudice to the interest of the employee also.

13. In view of these facts, the reasons for delay in concluding the disciplinary proceedings are attributable to the respondents only. It is an admitted fact that various High Courts and this Court have passed several orders setting aside the order of prolonged suspension and directed the authorities to post the suspended officers concerned in non-sensitive posts. The said orders were passed keeping in mind the public interest as payment of huge subsistence allowance without extracting work from the employees concerned, cause huge loss to the public exchequer.



14. In view of the facts and circumstances of the case and considering the fact that the petitioner has been kept under suspension nearly around 5 years, by following the proposition of law laid down by the Apex Court in “*Ajay Kumar Choudhary versus Union of India and another*” cited supra, this Court is inclined to interfere with the order of suspension passed by the respondents which is under challenge in the present Writ Petition. This Court also satisfied that the petitioner has made out a case for interference of this Court under Article 226 of the Constitution of India.

15. For the reasons stated above, this Court has no hesitation to hold that the order impugned in this Writ Petition is unsustainable and untenable as such it is liable to be set aside.

16. Accordingly, the Writ Petition is allowed with the following directions:

i) The impugned order of suspension dated 10.10.2019 vide No.MEE/E4/1664(B)/2017/MM is set aside.

ii) The respondent shall reinstate the petitioner



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forthwith.

iii) It is made it clear that as already the petitioner was posted in a non-sensitive post, no orders are required to post him in a non-sensitive post.

No costs.

Consequently, connected miscellaneous petition is closed.

25.04.2024

Index : Yes/No

Speaking order: Yes/No

Note: Issue order copy on 29.04.2024

dn/pvs

To

The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.



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BATTU DEVANAND, J

dn

Pre-Delivery order in
Writ Petition No.35217 of 2019

25.04.2024